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IN THE

Supreme Court of the United States

October Term, 1942

No. 214

STATE OF MICHIGAN, JOHN J. O'HARA, Auditor General for the State of Michigan, COUNTY OF WAYNE, a corporate body politic, JACOB P. SUMERACKI, Treasurer for the County of Wayne, CITY OF DETROIT, a municipal corporation, and ALBERT E. COBO, Treasurer of the City of Detroit,

Petitioners,

vs.

THE UNITED STATES OF AMERICA,

Respondent.

PETITION FOR A WRIT OF CERTIORARI

To the United States Circuit Court of Appeals for the Sixth Circuit

PAUL E. KRAUSE,
Corporation Counsel,
JOHN H. WITHERSPOON,
Chief Assistant Corporation Counsel,
BERT R. SOGGE and
JAMES H. LEE,
Assistants Corporation Counsel,
Attorneys for Petitioners, City of Detroit, a municipal corporation, and Albert E. Cobo, Treasurer of the City of Detroit,
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SAMUEL BREZNER and
HELEN MILLER,
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Attorneys for Petitioners, County of Wayne, a Corporate Body Politic, and Jacob P. Sumeracki, Treasurer for the County of Wayne,
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THE UNITED PRESS, DETROIT, MICHIGAN

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STATE OF MICHIGAN, JOHN J. O'HARA, Auditor General for the State of Michigan, COUNTY OF WAYNE, a Corporate Body Politic, JACOB P. SUMERACKI, Treasurer for the County of Wayne, CITY OF DETROIT, a Municipal Corporation, and ALBERT E. COBO, Treasurer of the City of Detroit, *Petitioners,*

v.

THE UNITED STATES OF AMERICA, *Respondent.*

PETITION FOR A WRIT OF CERTIORARI

To the United States Circuit Court of Appeals For the Sixth Circuit

To the Honorable, the Chief Justice and the Associate Justices of the Supreme Court of the United States:

Your petitioners, the State of Michigan, John J. O'Hara, Auditor General for the State of Michigan, County of Wayne, a Corporate Body Politic, Jacob P. Sumeracki, Treasurer for the County of Wayne, City of Detroit, a municipal corporation, and Albert E. Cobo, Treasurer of the City of Detroit, respectfully represent that:

As far as petitioners are concerned, this case involves the question whether the lien of the United States for

estate taxes is subordinate to the specific lien for taxes and assessments imposed by the State of Michigan County of Wayne and City of Detroit and made by the Constitution, statutes of the State of Michigan and the Charter of the City of Detroit a first lien, prior, superior and paramount to any other lien.

John P. Paul died intestate at Detroit, Michigan, May 6, 1926 (R. 102). At the time of his death, he and his wife, Lena Paul, owned as tenants by the entirety a considerable number of parcels of real estate located in that City (R. 230). Lena Paul, on the death of John P. Paul, became the sole owner of the said property.

On or about July 5, 1927, Lena Paul filed a Federal Estate tax return covering the estate of her husband (R. 229) and an estate tax liability of $3,450.00 which was duly paid (R. 229). Under the date of March 14, 1930, the Commissioner of Internal Revenue of the United States of America notified Lena Paul, as beneficiary of her husband's estate, of a deficiency of $23,271.84 in estate taxes. (R. 229, 230). A petition was filed for a redetermination and on November 4, 1932, the United States Board of Tax Appeals sustained the deficiency asserted by the Commissioner of Internal Revenue and entered its order accordingly (R. 230). No appeal was taken and on February 19, 1933, the Commissioner of Internal Revenue assessed against the estate of John P. Paul the deficiency in the principal amount of $23,271.84, together with interest in the amount of $8,080.28 (R. 230). No part of this has been paid (R. 230).

The present suit was instituted on May 4, 1936 to collect the amount found due by foreclosure of its lien for estate taxes against fifty parcels of real estate. The State of Michigan, the County of Wayne and the City of Detroit were also made parties defendant by reason of liens which

each possessed for unpaid real estate taxes assessed against the property in question.

The case was tried by the District Court upon a stipulation of facts supplemented by testimony. Only such facts as relate to the controversy between Respondent and these petitioners are set forth in detail above.

The District Court found that Sec. 315 (a) of the Revenue Act of 1926 (Section 827 (a) of the Internal Revenue Code) imposes a lien for the collection of Federal Estate Taxes, which is separate and distinct from the general tax lien created by Section 3186 of the Revied Statutes (Sections 3670 to 3677 of the Internal Revenue Code) and that the provisions of Section 3186 of the Revised Statutes requiring that notice be filed or recorded to make the lien imposed by the latter section valid as against bona fide purchasers and encumbrances, had no application to the lien imposed by Section 315 (a) of the Revenue Act of 1926.

The District Court also found that the lien asserted by Respondent in this case being prior in time was superior in right to the liens asserted by the State of Michigan, the County of Wayne and City of Detroit, regardless of notice.

The findings of fact and conclusions of law of the District Court, which are reported in 41 Fed. Supp. 41, are found on pages 229 to 243, both inclusive, of the Record; the Court's Decree on pages 247 to 256, inclusive.

Upon appeal by Petitioners and others to the United States Circuit Court of Appeals for the Sixth Circuit, that Court affirmed the decision of the District Court. The opinion of the Circuit Court of Appeals (R. 290) is reported in 127 Fed. (2nd) 64—Judgment entered April 8, 1942.

This Petition presents one question.

IS THE REAL ESTATE TAX AND ASSESSMENT LIEN LEVIED BY THE CITY OF DETROIT, COUNTY OF WAYNE AND STATE OF MICHIGAN, A FIRST LIEN, PRIOR, SUPERIOR AND PARAMOUNT TO ANY OTHER LIEN OR ENCUMBRANCE OR IS IT EXTINGUISHED BY THE FORECLOSURE OF THE LIEN OF THE GOVERNMENT?

The District Court and the Circuit Court of Appeals both determined that the liens of the United States were paramount to the liens of the State of Michigan, County of Wayne and City of Detroit which were acquired subsequent to the acquisition of the lien of the United States.

BASIS OF JURISDICTION

Jurisdiction is invoked under *Section* 240 (*a*) *of the Judicial Code, as amended by the Act of February* 13, 1925, 43 *Stat.* 938; *U. S. C.* 347 (*a*).

Petitioners believe that the judgment of the Circuit Court of Appeals is erroneous and contrary to the just rights of petitioners, and that this Court should require said cause to be certified to this Court for its review and determination, in conformity with the provisions of the Act of Congress in such case made and provided.

Certiorari should be granted for the following reasons:

I

The decision of the Circuit Court of Appeals involves the determination of an important question of Federal Law which has not been but should be settled by this Court, namely, the character, scope and effect of the lien

accorded to the United States of America by Federal Statutes for the collection of taxes.

More particularly, it concerns the priority of the lien of the United States over the liens of the State of Michigan and its political subdivisions.

II

The decision of the Circuit Court of Appeals, does, in effect, extinguish liens of the State of Michigan and its political subdivisons which arise by virtue of taxes lawfully assessed. It takes away from the petitioners the right to collect certain taxes lawfully assessed.

These taxes constitute the basic source of revenue for the City, the County, the State having other sources of revenue.

Wherefore, petitioners respectfully pray that a Writ of Certiorari be issued out of and under the seal of this Court, directed to the United States Circuit Court of Appeals for the Sixth Circuit, to the end that said cause may be reviewed and determined by this Court, as provided by law, and that petitioners may have such other and further relief or remedy in the premises as to this Court may seem appropriate, and that the judgment of said Circuit Court of Appeals may be reversed by this Honorable Court.

THE CITY OF DETROIT, a Municipal Corporation, and Albert E. Cobo, Treasurer of the City of Detroit,

By Paul E. Krause,
Corporation Counsel;
John H. Witherspoon,
Chief Assistant Corporation Counsel;

Bert R. Sogge and
James H. Lee,
Assistants Corporation
Counsel.

COUNTY OF WAYNE, a Corporate Body Politic, and Jacob P. Sumeracki, Treasurer of the County of Wayne,
By William E. Dowling,
Prosecuting Attorney, and
Samuel Brezner and
Helen Miller,
Assistants Prosecuting
Attorney.

STATE OF MICHIGAN and John J. O'Hara, Auditor General for the State of Michigan,
By Herbert J. Rushton,
Attorney General;
Edmund E. Shepherd,
Solicitor General;
Daniel J. O'Hara,
Assistant Attorney General.
Attorneys for Petitioners.

APPENDIX

Section 3186 *of the Revised Statutes of the United States* (*Act of July* 13, 1866, *c.* 184, *Sec.* 9, 14 *Stat.* 107 *as revised and amended by an Act of March* 1, 1879, *c.* 125, *Sec.* 3, 20 *Stat.* 331) *as amended by Act* 451, *March* 4, 1913 (*c.* 166, 37 *Stat.* 1016), *by an Act of February* 26, 1925, *c.* 344, 43 *Stat.* 994, *by Section* 613 *of the Revenue Act of* 1928, *by Section* 509 *of the Revenue Act of* 1934 *and Section* 401 *of the Revenue Act of* 1939, *now known as Sections* 3670 *to* 3677 *of the Internal Revenue Code*, as amended, reads as follows:

"§ 3670. PROPERTY SUBJECT TO LIEN

If any person liable to pay any tax neglects or refuses to pay the same after demand, the amount (including any interest, penalty, additional amount, or addition to such tax, together with any costs that may accrue in addition thereto) shall be a lien in favor of the United States upon all property and rights to property, whether real or personal, belonging to such person."

"§ 3671. PERIOD OF LIEN

Unless another date is specifically fixed by law, the lien shall arise at the time the assessment list was received by the collector and shall continue until the liability for such amount is satisfied or becomes unenforceable by reason of lapse of time."

"§ 3672. VALIDITY AGAINST MORTGAGEES, PLEDGEES, PURCHASERS, AND JUDGMENT CREDITORS

(a) *Invalidity of Lien without Notice.*—Such lien shall not be valid as against any mortgagee, pledgee, purchaser, or judgment creditor until notice thereof has been filed by the collector—

(1) *Under State or Territorial Laws.*—In accordance with the law of the State or Territory in which the property subject to the lien is situated,

whenever the State or Territory has by law provided for the filing of such notice; or

(2) *With Clerk of District Court.*—In the office of the clerk of the United States district court for the judicial district in which the property subject to the lien is situated, whenever the State or Territory has not by law provided for the filing of such notice; or

(3) *With Clerk of District Court of the United States for the District of Columbia.*—In the office of the clerk of the District Court of the United States for the District of Columbia, if the property subject to the lien is situated in the District of Columbia.

(b) (1) *Exception in Case of Securities.*—Even though notice of a lien provided in section 3670 has been filed in the manner provided in subsection (a) of this section, or notice of a lien provided in section 3186 of the Revised Statutes, as amended, has been filed in the manner prescribed in such section or subsection (a) of this section, the lien shall not be valid with respect to a security, as defined in paragraph (2) of this subsection, as against any mortgagee, pledgee, or purchaser of such security, for an adequate and full consideration in money or money's worth, if at the time of such mortgage, pledge, or purchase, such mortgagee, pledgee, or purchaser is without notice or knowledge of the existence of such lien.

(2) *Definition of Security.*—As used in this subsection the term 'security' means any bond, debenture, note, or certificate, or other evidence of indebtedness, issued by any corporation (including one issued by a government or political subdivision thereof), with interest coupons or in registered form, share of stock, voting trust certificate, or any certificate of interest or participation in, certificate of deposit or receipt for, temporary or interim certificate for, or warrant or right to subscribe to or purchase, any of the foregoing; negotiable instrument; or money.

(3) *Applicability of Subsection.* — Except where the lien has been enforced by a proceeding, suit, or civil action which has become final before the date of enactment of the Revenue Act of 1939, this subsection shall apply regardless of the time when the mortgage, pledge, or purchase was made or the lien arose."

"§ 3673. RELEASE OF LIEN

Subject to such regulations as the Commissioner, with the approval of the Secretary, may prescribe, the collector charged with an assessment in respect of any tax, may issue a certificate of release of the lien if—

(a) *Liability Satisfied or Unenforceable.* — The collector finds that the liability for the amount assessed, together with all interest in respect thereof, has been satisfied or has become unenforceable by reason of lapse of time; or

(b) *Bond Accepted.*—There is furnished to the collector and accepted by him a bond that is conditioned upon the payment of the amount assessed, together with all interest in respect thereof, within the time prescribed by law (including any extension of such time), and that is in accordance with such requirements relating to terms, conditions, and form of the bond and sureties thereon, as may be specified in the regulations."

"§ 3674. PARTIAL DISCHARGE OF PROPERTY

(a) *Property Double the Amount of the Liability.*—Subject to such regulations as the Commissioner, with the approval of the Secretary, may prescribe, the collector charged with an assessment in respect of any tax may issue a certificate of partial discharge of any part of the property subject to the lien if the collector finds that the fair market value of that part of such property remaining subject to

the lien is at least double the amount of the liability remaining unsatisfied in respect of such tax and the amount of all prior liens upon such property.

(b) *Part Payment.*—Subject to such regulations as the Commissioner, with the approval of the Secretary, may prescribe, the collector charged with an assessment in respect of any tax may issue a certificate of discharge of any part of the property subject to the lien if there is paid over to the collector in part satisfaction of the liability in respect of such tax an amount determined by the Commissioner, which shall not be less than the value, as determined by him, of the interest of the United States in the part to be so discharged. In determining such value the Commissioner shall give consideration to the fair market value of the part to be so discharged and to such liens thereon as have priority to the lien of the United States."

"§ 3675. EFFECTS OF CERTIFICATES OF RELEASE OR PARTIAL DISCHARGE

A certificate of release or of partial discharge issued under this subchapter shall be held conclusive that the lien upon the property covered by the certificate is extinguished."

"§ 3676. SINGLE BOND COVERING RELEASE OF LIEN AND PAYMENT OF INCOME TAX DEFICIENCY

The Commissioner, with the approval of the Secretary, may by regulation provide for the acceptance of a single bond complying both with the requirements of Section 272 (j) (relating to the extension of time for the payment of a deficiency) and the requirements of subsection (b) of section 3673."

"§ 3677. EXTENDED APPLICATION FOR PROVISIONS RELATING TO RELEASE OR PARTIAL DISCHARGE

Sections 3673, 3674, 3675, and 3676 shall apply to a lien in respect of any internal revenue tax, whether or not the lien is imposed by this sub-chapter."

Section 315 *of the Revenue Act of* 1926, *as amended by Section* 613 (*b*) *of the Revenue Act of* 1928 *and by Sections* 803 *and* 809 *of the Revenue Act of* 1932, *now known as Section* 827 *of the Internal Revenue Code* read as follows:

"§ 827. LIEN FOR TAX

(a) *Upon Gross Estate.* Unless the tax is sooner paid in full, it shall be a lien for ten years upon the gross estate of the decedent, except that such part of the gross estate as is used for the payment of charges against the estate and expenses of its administration, allowed by any court having jurisdiction thereof, shall be divested of such lien. If the Commissioner is satisfied that the tax liability of an estate has been fully discharged or provided for, he may, under regulations prescribed by him with the approval of the Secretary, issue his certificate, releasing any or all property of such estate from the lien herein imposed.

(b) *Upon Property of Transferee.* If (1) except in the case of a bona fide sale for an adequate and full consideration in money or money's worth, the decedent makes a transfer, by trust or otherwise, of any property in contemplation of or intended to take effect in possession or enjoyment at or after his death, or makes a transfer, by trust or otherwise, under which he has retained for his life, or for any period not ascertainable without reference to his death or for any period which does not in fact before his death (A) the possession and enjoyr of, or the right to the income from, the property, (B) the right, either alone or in conjunction with an person, to designate the persons who shall possess or enjoy the property or the income therefrom, or (2) if insurance passes under a contract executed by the decedent in favor of a specific beneficiary, and if in either case the tax in respect thereto is not paid when due, then the transferee, trustee, or beneficiary shall be personally liable for such tax, and such property, to the extent of the decedent's interest therein at the time of such transfer, or to the extent of such

beneficiary's interest under such contract of insurance, shall be subject to a like lien equal to the amount of such tax. Any part of such property sold by such transferee or trustee to a bona fide purchaser for an adequate and full consideration in money or money's worth shall be divested of the lien and a like lien shall then attach to all the property of such transferee or trustee, except any part sold to a bona fide purchaser for an adequate and full consideration in money or money's worth.

(a) *Continuance after Discharge of Executor.* The provisions of section 825 shall not operate as a release for any deficiency that may thereafter be determined to be due, unless the title to such part of the gross estate has passed to a bona fide purchaser for value, in which case such part shall not be subject to a lien or to any claim or demand for any such deficiency, but the lien shall attach to the consideration received from such purchaser by the heirs, legatees, devisees, or distributees."

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